IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 651 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CENTRAL BANK OF INDIA

Versus

K D RESHAMWALA

Appearance:

MR ARUN H MEHTA for Petitioner

MR SV RAJU for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 06/07/2000

ORAL JUDGEMENT

This Revision Application has been preferred against the order dated 22nd April, 1997 below application exh. 17 in Small Civil Suit No. 148 of 1996 passed by the Judge, Small Cause Court, Surat whereby the

Court concerned has allowed the application fixing interim standard rent of the suit premises at Rs.20/- per sq.ft. per month with effect from 1.7.1992 exclusive of taxes, education cess and electricity charges. The petitioner-original defendant has also been directed to deposit in the Court arrears of rent at the said rate of interim standard rent with effect from 1.7.92 to 30.4.97 on or before 31st May, 1997 and continue to deposit the said rent in the court and thereafter continue to deposit the said rent at the aforesaid rate as and when the same becomes due and payable to the plaintiffs.

2. The petitioner defendant took on lease from the respondent-landlord premises on monthly rent of Rs.2.85 per sq.ft. The premises was taken on lease on 5.7.89. The lease deed executed between the parties was registered. The lease was executed for a period of five years from 1.7.87 and that was to expire on 30th June, 1992. The rent agreed to be paid was at the rate of Rs.2.85 per sq.ft. per month plus taxes etc. The lease was to be renewed for a period of five years. Even in absence of notice, verbal or written, the lease was deemed to have been renewed for a period of five years on the expiration of the period of lease. Accordingly, the lease was renewed for a further period of five years from 1.7.92 to 30.6.97 on the same terms and conditions contained in the lease deed. The plaintiff respondent filed a suit for possession and arrears of rent alongwith the application exh. 17 for fixing the monthly rent and that period expired on 30th June, 1992. After the expiry of period of five years on 1st July, 1992, the petitioner agreed to take the aforesaid premises on lease for a further period of five years at the monthly rent of Rs.20/- per sq.ft.

3. The defendant filed the reply denying the allegations and averments made by the plaintiff that the aforesaid suit premises was taken on lease by the defendant upto 30.6.1992. It has been specifically denied by the defendant in the reply that the suit premises was taken on lease by the defendant for a period of five years. The defendant however, admitted in reply that the suit premises was taken on lease by the defendant at the agreed rate of rent of Rs.2.85 per sq.ft. per month. As such, the standard rent of the suit premises could not be more than Rs.2.85 per sq.ft. per month.

4. The trial court came to the conclusion that after expiry of the lease period of five years, monthoy agreed rent of the suit premises was at the rate

of RS.20/- per sq.ft. and the trial court allowed the application fixing the interim standard rent of the suit premises at the rate of RS.20/- per month exclusive of all taxes, education cess and electricity charges.

5. The learned advocate for the petitioner contended that the trial court has committed an error on the face of the record in fixing the monthly rent of Rs.20/- per sq.ft. from Rs. 2.85 per sq.ft. He further contended that according to the lease terms, the petitioner was to pay rent at the rate of Rs.2.85 per sq.ft. per month from 1st July, 1987 regularly every month. He referred the condition 3 (d) of the lease agreement wherein it is mentioned that if the lessee shall be desirous of renewing the lease hereby grant ed for a further term of five years, as per one option of five years from the date of expiration of the period of lease hereby granted, even in the absence of any notice in writing or verbal, from the lessee, the option period shall be deemed s having been exercised by the lessee for continuing the term of the renewal of the lease, hereby granted, for further period of five years at the expiration of the certain period by the lessee continuing to use the premises as hitherto. The lessee shall however pay the rent hereby agree and perform the several stipulations herein contained and on its part to be observed upto the termination of the term hereby granted then the lessor shall allow use of the demised premises to the lessee for a further term of five years from 30 days of June, 1992 upon the same terms and conditions as are herein contained including this convenant for renewal. Upon the same terms of the lease, the period of five years was to be extended automatically on the same terms and conditions of the lease. As such, according to him, the trial court has committed an error that subsequently the petitioner agreed to pay the rent at the rate of Rs.20/- per sq.ft. in place of Rs.2.85 per sq.ft. He also contended that Section 5(10)(b)(iii) of the Act says that where they were not let on the first day of September, 1940, the rent at which they were last let before that day will be considered as standard rent. It is a contractual rent which itself to be deemed to be standard rent. The Court below has committed an error on the face of the record that the rent on which the lease was granted is not a standard rent and erred in fixing the interim standard rent. He further contended that this Court has revisional jurisdiction under section 115 of Civil Procedure Code and supervisory jurisdiction under Article 227 of the Constitution of India over lower judiciary throughout the territory of the State. As the Court has committed an error on the face of the record,

it is not sustainable in the eye of law and this Court should interfere and correct the error committed by the court below. He relied on the decision of this Court in the case of Harkisondas Chunilal Chokshi vs. Prabhavatiben widow of Shah Ambalal Laxmichand, reported in 1973 (14) GLR, 438 wherein it has been considered that in the first place that order under sub-section (4) of section 11 of the Rent Act can be made only where rent has in fact, not been paid. Secondly, it must be made where the Court is satisfied that the tenant is withholding the rent on the ground that rent is excessive and standard rent should be fixed and thirdly it may be made in any case if it appears to the court that it is just and proper to make such an order. Unless first and second or first and third of these conditions are satisfied, no order of nature contemplat ed by sub-section (4) can be made by the Court. It is also observed that sub-section (5) provides that no appeal shall lie from any order of the Court under sub-section (3) or (4). The effect of this provision is that no order under sub-section (4) would be an appealable order. The order may however, be susbject to revision under section 115 of Civil Procedure Code and also subject to the scrutiny of the High Court under Article 227 of the Constitution of India, if it is found in a good case that the order raises a question which could be dealt with or decided in exercise of such powres.

6. On the other hand, the learned advocate for the respondent contended that section 29(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 provides an alternative remedy to be availed before the District Court. Section 29(3) provides that where no appeal lies under this section from a decree or order in any suit or proceeding in the city of Ahmedabad, the bench of two Judges specified in clause (a) of sub-section (1) and elsewhere the District Court may for the purpose of satisfying conditions that the decree or the order made was according to law, call for the case in which such decree or order was made and pass such order with respect thereto as it thinks fit. According to him, the revisional power has been given to the District Court where no appeal lies. In the present case, the appeal does not lie and hence the revisional jurisdiction is with the District Court under the statutory provisions of section 29(3) of the Act. In case this Court exercises revisional jurisdiction under section 115 of Civil Procedure Code, the respondent will lose one right of remedy to approach the High Court under section 115 of Civil Procedure Code or other remedy which may be availed under Article 227 of the Constitution of India. In case,

Revisional jurisdiction is directly exercised by this Court under section 115 of Civil Procedure Code, nobody will approach the forum available in the statute and all persons will rush to the High Court for exercise of revisional jurisdiction under section 115 of Civil Procedure Code where statutory remedy is available in the special statute, the High Court should not entertain such revision application, even if it is assumed that some error has been committed by the court below and that error can be corrected by way of remedy available in the statute itself. If alternative remedy is available provided by the special statute this Court should not exercise general powers of revisional jurisdiction under section 115 of Civil Procedure Code. In support of his arguments, the learned advocte for the respondent relied on the decision of this court in the case of Harbhajansingh Dunasingh Sarary vs. Suryakant Mulshanker Kaka reported in AIR, 1982 Gujarat, 296. It is not held therein that no revision application is maintainable under section 29(3) of the Act against the order passed under section 11(4) of the Act.

7. I have carefully considered the rival contentions of the learned counsel for the parties and perused the relevant record.

8. It is not disputed that an appeal does not lie against the order passed in this case. The provisions of section 29(3) of the Act provides a remedy of revisional jurisdiction to be exercised by the District Court where an appeal does not lie and as such the Revision Application ought to have been filed before the District Court. So far as the revisional powers of this Court under section 115 of Civil Procedure Code and supervisory powers under Article 227 of the Constitution of India are concerned, it is not even denied by the learned advocate for the respondent that this Court has no such power, but those powers should not be exercised where alternative remedy is provided by a special statute. In the present case, a revision is provided before the District Court by the provisions of section 29(3) of the Act. This Court is not inclined to exercise revisional jurisdiction under s ection 115 of Civil Procedure Code or supervisory powers under Article 227 of the Constitution of India as the statute provides an alternative remedy of revision before the District Court. In the facts and circumstances, I think it proper that the petitioner should approach the District Court under section 29(3) of the Act and file a Revision Application before District Court. The Court concerned should decide the same in accordance with law. The Court concerned

shall not take into consideration the argument regaring limitation.

9. Accordingly, this Revision Application is disposed of finally with a direction that the petitioner will file a Revision Application before the District Court under section 29(3) of the Bombay Rent Act within a period of eight weeks from today and in case such Revision Application is filed within stipulated time, the Court concerned will decide the same within a period of four months thereafter, in accordance with law without taking into consideration the question of limitation.Till the final decision by the Court concerned, the operation and implementation of the order dated 22.4.1997 passed by the Judge, Small Cause Court, Surat below application exh. 17 in Small Civil Suit No. 148 of 1996 shall remain stayed.

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